

State of California
BOARD OF EQUALIZATION
DIESEL FUEL TAX REGULATIONS

Regulation 1435. TAX PAID TWICE ON DIESEL FUEL.

Reference: Sections 60051, 60052, 60501, 60507, 60508.4 and 60521.5, Revenue and Taxation Code.

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.

The credit will be allowed only if:

- (1) A tax imposed on the diesel fuel by Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the "first tax" or "first taxpayer");
- (2) After imposition of the first tax, another tax was imposed on the diesel fuel by Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the "second tax" or "second taxpayer");
- (3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;
- (4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and
- (5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) REPORTING REQUIREMENTS.

- (1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

- (2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Section 60051 (removal at a terminal rack), Section 60052(b)(2) (nonbulk entries into the state), or Section 60052(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

- (3) Information provided to subsequent owners, etc.

(A) BY PERSON REQUIRED TO FILE FIRST TAXPAYER'S REPORT.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

- (1) The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or
- (2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

Regulation 1435. (Continued)

(B) BY PERSON FILING OPTIONAL FIRST TAXPAYER'S REPORT.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

- (1) The person to whom the first taxpayer sells the diesel fuel; or
- (2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) BY PERSON RECEIVING FIRST TAXPAYER'S REPORT.

- (1) Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

- (2) Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 60051 and 60052 with respect to the diesel fuel.

(D) FORM OF STATEMENT.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) SALE TO MULTIPLE BUYERS.

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

(d) CLAIM FOR REFUND.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

EXHIBIT A
FIRST TAXPAYER'S REPORT

1. _____

First Taxpayer's Board of Equalization supplier account number.

2. _____

First Taxpayer's name, address, and employer identification number.

3. _____

Name, address, and employer identification number of the buyer of the diesel fuel subject to tax.

4. _____

Date and location of removal, entry, or sale and document number.

5. _____

Volume and type of diesel fuel removed, entered, or sold.

6. Check type of taxable event:

☐ Removal from refinery

☐ Entry into United States or state

☐ Bulk transfer from terminal by unregistered position holder

☐ Bulk transfer not received at an approved terminal

☐ Sale within the bulk transfer/terminal system

☐ Removal at the terminal rack

☐ Removal or sale by the blender

7. _____

Amount of Federal excise tax paid and State diesel fuel tax paid on account of the removal, entry, or sale.

8. _____

Location of IRS service center where this report is filed and State reporting period of payment.

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the diesel fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this report

Title

EXHIBIT B
STATEMENT OF SUBSEQUENT SELLER

1. _____

Board of Equalization supplier account number or prepaid sales tax account number.

2. _____

Name, address, and employer identification number of seller in subsequent sale.

3. _____

Name, address, and employer identification number of buyer in subsequent sale.

4. _____

Date and location of subsequent sale and document number.

5. _____

Volume and type of diesel fuel sold.

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the diesel fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title